IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

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WRIT PETITION NO : 25269 of 1995

Between:

The East Yerra Balli Gram Panchayat,

Rep. by its Sarpanch Smt.M.Ragamma,
Kondapuram Mandal, Nellore District.

..... PETITIONER

AND

1 The District Collector,
Nellore, Nellore District.
2 The Revenue Divisional Officer,
Kavali, Nellore District.
3 The Mandal Revenue Officer,
Kondapuram Mandal, Nellore District.
4 G.Papaiah, S/o Narasaiah,
R/o East Yerra Balli, Kondapuram Mandal,
Nellore District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction, declaring the inaction of the respondents in preventing the 4th respondent and his men in interfering with the extent of Ac.9-60 cents in S.NO.152, which is a grazing poramboke and vests in the Gram Panchayat, as illegal, and arbitrary and contrary to Section 58 (1) of A.P.Panchayat Raj Act r/w. Rule 11 of Rules relating to Restriction and Control of Porambokes and trees vested in the Gram Panchayats (G.O.Ms.No.107 P.R. dt:7-3-1968); and pass such other

order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.M.RAVINDRANATH REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

Counsel for the Respondent No.4: SMT A.ANASUYA

The Court at the stage of admission made the following ORDER:

The petitioner-Gram Panchayat, Kondapuram filed this writ petition challenging the inaction on the part of the respondents in preventing the fourth respondent in interfering with an extent of land admeasuring Acs.9-60 cents in Survey No.152, which was a grazing poramboke and vested in the Gram Panchayat under Section 58(1) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short “the Act”).

It is not disputed that under Section 58(1) of the Act, all grazing grounds, threshing floors, burning and burial grounds, cattle stands, cart stands and topes, which are at the disposal of the Government and are not required by them for any specific purpose, shall vest in the gram panchayat subject to such restrictions and control as may be prescribed. Therefore, it is always open for the Government by publishing a notification in the Andhra Pradesh Gazette to direct that any poramboke referred to sub-section (1) of Section 58 of the Act shall cease to vest in the Gram Panchayat, if it is required by it, for any specific purpose and thereupon, such porambokes shall vest in the Government.

In the present case, the Government has not issued any such notification. The then Tahsildar granted Ek-sal lease of
Acs.3-50 cents out of the said survey number in favour of the fourth respondent on 07-02-1980 and it was extended from time to time till 30-06-1984. At that stage, the petitioner-Gram Panchayat raised its objections before the second respondent-Revenue Divisional Officer, Kavali, Nellore, regarding grant of Ek-sal lease by the then Tahsildar in favour of the fourth respondent and the second respondent in his proceedings in Rc.F.6051/82, dated
14-10-1983 objected for grant of lease and accordingly, set aside the proceedings of the then Tahsildar granting lease in favour of the fourth respondent holding that the joint family of which, the fourth respondent is a member, owned landed property of

Acs.13.02 cents and that the gram panchayat stood vested the land under Section 58(1) of the Act. Questioning the proceedings issued by the second respondent, the fourth respondent filed WP.No.9141 of 1983 and the same was dismissed by this Court upholding the order passed by the second respondent. In the said order, this Court made some observations, which are as under:

"The fourth respondent cannot claim any right in respect of the land in question. However, the Government has not renewed the lease after 30-06-1984. If the petitioner was not already evicted, he shall be permitted to remove the electric motor said to have been installed by him and other belongings within one month from the date of dismissal i.e. 29-08-1985."

In spite of the orders passed by this Court in WP.No.9141 of 1983, dated 29-08-1985 calling upon the respondents to evict the fourth respondent and handover possession, it appears that the third respondent-Mandal Revenue Officer, Kondapuram Mandal, Nellore District, granted fresh Ek-sal lease on 25-08-1989 in favour of the fourth respondent over an extent of Acs.3-50 cents and the fourth respondent is continuing in possession. Therefore, the present writ petition came to be filed by the petitioner-Gram Panchayat complaining that the action of the respondents in defeating the interests and rights of the gram panchayat by granting Ek-sal lease in favour of the fourth respondent and allowing him to cultivate the land, is arbitrary and illegal.

This Court initially i.e. on 09-11-1995 directed respondents 1 to 3 to prevent the fourth respondent and his men from interfering with the grazing poramboke land of Acs.9-60 cents in survey No.152 belonging to the Gram Panchayat and on moving vacate stay petition by the fourth respondent, this Court modified the earlier order dated 09-11-1995 through order dated
01-12-1995 permitting the fourth respondent to cut the cotton crop grown by him, if any.

The Joint Collector filed counter on behalf of the first respondent-District Collector stating that the land in question is vested with the gram panchayat under Section 58(1) of the Act for the purpose of maintenance and there is no illegality or arbitrariness in granting Ek-sal lease to the fourth respondent. It is also stated that since vast extent of the land is available in survey No.672, which is classified as waste and fit for grazing purpose and the fourth respondent spent considerable

amount for making the land fit for cultivation, Ek-sal lease was granted in his favour and as per the report of the second respondent, fourth respondent is having patta land of Ac.01-50 cents towards his share and during the year 1994-95, the fourth respondent had raised the cotton crop. The petitioner and its followers objected since there is a political rivalry between the followers of the petitioner and the fourth respondent and for the last several years, the land in question was not used for grazing purpose and the land in Survey No.672 will cater the needs for grazing purpose and fourth respondent is eligible over an extent of Acs.1-70 cents to cultivate the same. The same was granted Ek-sal lease.

Fourth respondent filed counter stating that after dismissal of the writ petition filed by him, the first respondent by proceedings dated 02-02-1989 ordered to grant D-form patta to him and directed the third respondent to renew the Ek-sal lease till the patta was granted. He further stated that he came to know from the third respondent's office that the petitioner-Gram panchayat withdrawn its interest over the land, which was published in the District Gazette. Further, when the petitioner-Gram Panchayat attempted to cut the crop raised by him, he filed a suit in O.S.No.201 of 1985 before the District Munsif, Atmakur, and obtained temporary injunction. The said suit was decreed in his favour on 07-05-1994. As the petitioner-Gram Panchayat did not prefer any appeal, the same has become final. He further stated that D-form patta is also ready for issuance. In view of the same, the present writ petition filed by the petitioner-Gram Panchayat cannot be entertained and he is entitled to cultivate the land and raise the crop.

Learned counsel for the petitioner-Gram Panchayat rightly contended that once the land vested in the gram panchayat under Section 58(1) of the Act, the same is assessed to be a gram panchayat land and without issuing a notification under sub-section (2) of Section 58 of the Act, the revenue officials will not get any right. In this regard, he relied on a decision of this Court reported in ***SARPANCH, POLAKALA GRAM PANCHAYAT, IRALA MANDAL, CHITTOOR DISTRICT v. DISTRICT COLLECTOR, CHITTOOR AND OTHERS***, wherein, it was held that unless such a notification is issued, the revenue officials will not get any right for assigning to anybody else.

In the letter addressed by the third respondent vide RCB.No.221/85, dated 26-10-1995, it is clearly mentioned that the lease granted in favour of the fourth respondent has been cancelled on dismissal of W.P.No.9141 of 1983 by this Court.

As per the said orders, notices Nos.7 and 6 have been issued to the fourth respondent and he has been evicted from the land. Afterwards, the grazing poramboke land to an extent of
Acs.3-50 cents has been given in lease by the third respondent on 20-02-1989 for the Fasli, 1398. Afterwards, no lease has been granted to anybody and the lease has not been renewed.

Whereas the learned counsel for the fourth respondent contends that on issuance of notices Nos.7 and 6 ordering eviction, the fourth respondent filed an appeal before the first respondent, who entertained the appeal and stayed the proceedings.

If that be the case, it is in clear violation of the orders passed by this Court in WP.No.9141 of 1983, which cannot be countenanced. In the said writ petition, this Court directed the fourth respondent to vacate and handover possession within one month. The learned counsel for the fourth respondent submits that the third respondent in Proceedings No.221/85, dated 31-08-1989 submitted proposals for withdrawing the land from the control of Gram Panchayat and for enabling the revenue officials for assigning the same but no such withdrawal notification and assignment made in his favour has been produced before this Court.

In view of the same, unless the land is notified under
sub-section 2 of Section 58 of the Act specifying that the same was ceased to be vested in the gram panchayat, the revenue officials will not have any right, as such, to grant Ek-sal lease in favour of the fourth respondent.

The writ petition is accordingly allowed. No costs.

5th NOVEMBER, 2004.

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To

1 The District Collector,
Nellore, Nellore District.
2 The Revenue Divisional Officer,
Kavali, Nellore District.
3 The Mandal Revenue Officer,
Kondapuram Mandal, Nellore District.
4 Two CCs to the Government Pleader for Revenue, A.P.High Court Buildings, Hyderabad (OUT).

5 Two CD copies.